

Internal Revenue Service
memorandum

date: JAN 23 1990

to: District Counsel, Greensboro

CC:GBO

from: Assistant Chief Counsel (Tax Litigation)

CC:TL

subject:

Taxable Year Ended: [REDACTED]

Taxable Period Ended: [REDACTED]

Taxable Period Ended: [REDACTED]

Request for Technical Advice - Forms 872; Proper Party or Agent
for Purposes of Extending the Limitations Period and for
Receiving Statutory Notices of Deficiency

This responds to your request for technical advice from this
office, dated November 2, 1989, as to the appropriate party (1)
to execute any consent extending the statute of limitations for
the year ending [REDACTED] and the short period of
[REDACTED] ending [REDACTED] and (2) to
receive any statutory notices of deficiency for those taxable
periods.

FACTS

The facts as recited in your request of November 2, 1989,
are hereby incorporated by reference. These facts may be
briefly summarized as follows: [REDACTED]

[REDACTED] filed consolidated returns for preceding
taxable years and the short taxable period ending on [REDACTED].
Effective [REDACTED] -- after completion of
various stock and asset transactions and a preliminary merger of
a certain subsidiary of an [REDACTED] into the old common
parent -- [REDACTED] ("Old [REDACTED]") was merged
into [REDACTED] with "Old [REDACTED]" going out of
existence and the survivor corporation, [REDACTED],
changing its name to [REDACTED] ("New
[REDACTED]").

Prior to the time that Old [REDACTED] went out of existence,
it had not designated a member of the affiliated group as the
new agent for that group per Treas. Reg. § 1.1502-77(d).
Similarly, the members of the affiliated group had not
designated one of their number to act as such agent. See *id.*

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RECOMMENDATION

In general, we agree with the proposed actions discussed in your November 2, 1989 request. As we advised you informally with regard to other pre-merger years () and as your memorandum indicates, New (EIN: , formerly) succeeds to and becomes liable for the pre-merger taxes of Old (EIN:) as successor to the old common parent; however, this liability is arguably not in the capacity as an agent for the group. Under the regulations, New cannot be so designated as agent -- either by the old common parent before termination or by the members after the old parent has gone out of existence -- since New was arguably never a member of the group in question.

Thus, as to the successor liability and the transferee liability of New for Old with regard to the taxable year ended and the taxable period ended , we recommend that New execute Forms 872-A, 977, and 2045 in the same manner and with the same clarifications as provided on those forms already executed for pre-merger years .

Since the surviving members of the old group are now willing to designate as agent for the group for those years, we recommend, as further protection for the Government (at least with respect to the two pre-merger periods indicated in your request), that you secure a written designation of agency from each still-surviving member for both of those periods and then have execute a Form 872 for the members of the Old group as their agent.¹ Your memorandum also suggests doing this; however, as part of that suggestion you would have execute a consent on behalf of New as New 's agent. We would not recommend that course of action since we contend that New 's liability flows from its status as successor and transferee. In short, seeking such an agency designation as to New would gain little, if any, actual protection and may invite closer questioning as to our concerns.

¹ If any subsidiary members of the old group have since gone out of existence, it would be advisable to secure their successor's designation of as well. This designation would be in the capacity of successor corporation for the old group member.


Even if the [REDACTED] agent designation is not obtained, the members may all be dealt with individually. Treas. Reg. § 1.1502-77(d). Since each subsidiary that was a member of the group during any part of the consolidated return year is, as a general rule, severally liable for the tax (Treas. Reg. § 1.1502-6(a)), you may consider securing the consent of each (or the largest ones) as to extension of the statute of limitations.

As to the issuance of any statutory notices of deficiency, if [REDACTED] becomes the agent for the group for these years then, of course, one statutory notice to it would suffice with regard to all the surviving members. We would recommend, however, that a notice also be served on New [REDACTED] for its successor liability and then also a separate notice for its transferee liability.

Finally, although your request does not mention the post-merger taxable period ending [REDACTED], after having cited it on the "Subject" line, we assume that you will secure a Form 872, if needed, from the new common parent of the entire post-merger affiliated group (i.e., [REDACTED]) for that tax period.

MARLENE GROSS

By:


ALFRED C. BISHOP, JR.
Chief, Branch No. 12
Tax Litigation Division

Attachments: Misc. Files [3]